IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 29308 of 2001(L)

PETITIONER:

V.PADMANABHAN NAIR,
(SUPERINTENDENTING ENGINEER (RETIRED)),
PRAYAG, T.C.15/139.
ALTHARA ROAD, THIRUVANANTHAPURAM-695 010.

BY ADV. SRI.E.SUBRAMANI
SRI.S.EASWARAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECREARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. REMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.47608/2001 IN OP.NO.29308/2001

Dismissed

23/5/2007

Sd/-
P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 COPY OF SHOW CAUSE NOTICE NO.9104/92/VIG.4 DTD. 17/7/93 ISSUED TO THE PETITIONER BY THE CHIEF ENGINEER, IRRIGATION ADMINISTRATION.

EXT.P2 COPY OF EXPLANATION DTD. 10/9/93 SUBMITTED BY THE PETITIONER TO EXT.P1.

EXT.P3 COPY OF PROCEEDINGS NO.IRRN.VIG.3-9104/92 DTD. 12/5/2000 ISSUED TO THE PETITIONER BY THE CHIEF ENGINEER.

EXT.P4 COPY OF COMMUNICATION OF EVEN NUMBER DTD. 6/7/2000 FROM -DO- -DO-

EXT.P5 COPY OF DEMAND NOTICE NO.R6/40835/2000 DTD. 12/10/2000 ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT.

EXT.P6 COPY OF OBJECTION DTD. 8/11/2000 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P7 COPY OF PROCEEDINGS LNO.R6.40835/2000/D.DIS. DTD. 4/9/2001 OF THE 2ND RESPONDENT.

P.R.RAMAN, J.

O.P.NO.29308 OF 2001

Dated this the 23rd day of May, 2007

JUDGMENT

Petitioner is a retired Superintending Engineer. He challenges Ext.P7 proceedings dated 4/9/2001 initiated under the Kerala Public Accountants Act by the District Collector, by which the petitioner was required to remit an amount of Rs.1,01,605/-.

2. Briefly stated facts are as follows:

Petitioner, while working as Executive Engineer in the Irrigation and Administration Department, released an amount of Rs.1,01,605/- out of the three part bills of the contractor, who was entrusted with the subsequent work. Provisional decision was taken by the Chief Engineer, Irrigation and Administration Department, Thiruvananthapuram by letter dated 17/7/1993 to recover an amount of Rs.1,01,605/- from the petitioner as the alleged loss sustained by the Government because of the irregular release of the retention amount to the Contractor. A show cause notice was issued as to why the said loss should not be recovered from him. Petitioner submitted his reply by Ext.P2 dated 10/9/1993 inter alia contending that he will not fall within the term "Public Accountant" as defined in the Kerala Public

Accountants Act, as according to him, he was not entrusted with any money as security and there is only a temporary release of the money based on the security due to the Contractor. Thereafter, no follow up action was taken for a period of 7 years. Later by Ext.P3 dated 12/5/2000 an opportunity of personal hearing was afforded to the petitioner, which however he did not avail. But the petitioner by letter dated 7/6/2000 addressed to the Chief Engineer submitted that due to unforeseen circumstances and reasons, he was unable to attend the personal hearing on 30/5/2000. Subsequently, the Chief Engineer by letter dated 6/7/2000 produced as Ext.P4 in this case, informed the petitioner that action has already been taken under the Kerala Public Accountants, 1963 to recover an amount of Rs.1,01,605/- being the loss sustained to the lst respondent. The District Collector in turn on receipt of the statement from the Head of the Department, namely the Chief Engineer, issued a notice (Ext.P5) to the petitioner. Petitioner submitted his reply, Ext.P6 and Ext.P7 was eventually passed . Petitioner seeks to quash Ext.P7 on two grounds; (i) that in so far as his position do not satisfy the definition of the term "Public Accountant" as defined in the Public Accountants Act and as he was not entrusted with any money, no proceedings under the Act could

possibly be taken against him and (ii) that even assuming that proceedings be taken, the District Collector has not complied with the mandatory requirement under Section 3(3) of the Public Accountants Act, in so far as he has not conducted an independent enquiry and taken a decision in this matter, rather he was swayed away by the proceedings already initiated by the Chief Engineer in this regard. In other words, he merely stated that because of the finding of the Chief Engineer the contention raised by the petitioner in his reply was rejected without independently considering the reply.

3. As regards the lst contention is concerned, it is not shown that the petitioner will not satisfy the definition of the term "Public Accountant" as defined under the Act. If a person is entrusted with the possession or control of any moneys or securities for money, he will fall within the definition of the term "Public Accountant". In this case the recovered amount from the three part bills, which is stated to be retention amount, has since been released by the petitioner. If so, he is in the control of the money retained and kept. However, there is force in the other argument that the District Collector has not made an independent inquiry before proceeding to recover the amount. As per Section 3 of the Act, when a

statement is received by the District Collector from the Head of a Department, a notice of demand may be served on the Public Accountant by the District Collector and if the Public Accountant does not satisfy the demand, but objects to the claim wholly or in part, the Collector shall enquire into the objection and record a decision. Therefore, as per Section 3(3) of the Act, when an objection is filed, the District Collector is bound to enquire into the objection and record a decision. In this connection, I only refer to a decision of this Court in **Padmanabha Iyer v. State of Kerala (1974 KLT 556),** wherein it was held as follows:

> "A notice issued under the provisions of the Kerala Public Accountants Act could be objected to by the person to whom it is issued. If the claim is disputed it has necessarily to be enquired into. S.3 mentions only that the Collector "shall enquire into the objection and record a decision." The brevity of the language of the section is not intended to invest arbitrary powers with the Collector. On the other hand, the very fact that the section gives such large powers to the Collector imposes on him the duty of properly conducting the enquiry after giving the parties sufficient and reasonable opportunity to meet the case against them and after giving them an occasion to place their case fairly and squarely before the Collector. Parties should be notified of the dates on which the enquiry is to be held and holding of the enquiry necessarily means that opportunity should be given to the parties to whom notices are issued to produce evidence, if any, that they want to rely upon and if they dispute the liability, the material which is

> sought to be made use of against them has also to be brought to their notice. It is not necessary that the elaborate procedure that is resorted to in the civil courts is adopted by the Collector in this behalf. All the same, the Collector must bear the trappings of an authority sitting to determine a lis between the parties. If that be not the case and he passes a cursory order rejecting the objections for reasons best known to him, the Collector or other appropriate authority does scant service to his duty and any court before which such an order is under challenge will be compelled to set aside the order. That happens in this case."

4. On a reading of ExtP7 it can be seen that the District Collector rejected the objection of the petitioner after stating that the Chief Engineer as per the reference 4 cited has stated that an amount of Rs.1,01,605/- is liable to be recovered from Padmanabhan Nair, Superintending Engineer (Retired). In the circumstances, the contentions of the petitioner were rejected. In other words, the District Collector did not take any independent decision on the matter, after conducting an enquiry as required under Section 3(3) of the Act. Since the power is conferred on the District Collector to enquire and to take a decision, he is bound to enquire into the matter independently and take a decision, after affording an opportunity of being heard to the petitioner. It has not been done in this case. In the circumstances, Ext.P7 is liable to be quashed and I do so. It is open to the District Collector to pass fresh

orders in the matter, after affording an opportunity of being heard to the petitioner. As and when the petitioner receives a notice of personal hearing, it will be open to him to file any additional objections, if he is so advised.

Original Petition is allowed as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

O.P.NO.29308 OF 2001

JUDGMENT

23rd May, 2007